THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 13367 OF 2005

14th March, 2006

Between:

Sri M.L.Kapur …Petitioner

A N D

The Secunderabad Cantonment Board,

Secunderabad, rep. byits Executive Officer,

and others

…Respondents.

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 13367 OF 2005

O R D E R :

1. This writ petition has been filed by M.L.Kapur through its registered General Power of Attorney holder Sri G.Kishen Rao with a prayer to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action

of the Secunderabad Cantonment Board-1st respondent and Air Ports Authority of India, Hyderabad-3rd respondent in refusing to consider his building permission application based on a letter issued by the Collector Hyderabad District, Hyderabad-2nd respondent is arbitrary and erroneous.

2. The case of the petitioner in brief, is as follows:

The petitioner purchased plot No. 151 in Survey No. 74/7, admeasuring 500 square yards which is part of approved lay out of Dhanalaxmi Co.op. Housing Society Limited, Mahendra Hills, Secunderabad. He approached the Secunderabad Cantonment Board by making an application for permission to construct a residential house on the said plot. The petitioner having come to know that the Government of Andhra Pradesh is claiming Survey No. 74/9, 74/7 and other survey Numbers and permission is being granted to the individual plot owners on their undertaking of removing the structures without claiming any equities relief in case of land grabbing case being L.G.C.No.167 of 1997 instituted by the state is decided in its favour made an application on 20-4-2005 seeking sanction. He has given undertaking that he will not claim any compensation in case the Government succeeded in the land grabbing case. The 1st respondent by its proceedings dated 4.5.2005 rejected the building permission application for want of 'No Objection Certificate' from the District Collector as well as from Airport Authority of India. With regard to the first objection, the petitioner has already given appropriate undertaking and with regard to the second objection, Airports Authority of India under their proceedings dated 30/31-12-2004 insisted to produce clearance certificate from the District Collector. According to the petitioner, he submitted requisite documents including development bills and undertaking as per Form I-A, elevation certificate by authorized consultant, site elevation certificate by Cantonment Engineer, Survey of India maps, Hyderabad Airport and Environmental Maps, and land documents. When M.C.H. had taken a similar objections a Division Bench of this Court in W.P.No.61 of 2000 issued certain directions permitting the petitioners therein to file undertaking for release of sanction. Several other plot owners have accordingly be sanctioned and made constructions. Even in the Cantonment area also. There have been several constructions made, apparently, by giving appropriate undertaking to protect the interest of the Government. When the similar undertaking given by the petitioner is not accepted by the Cantonment Board, the petitioner has chosen to approach this

Court invoking jurisdiction under Article 226 of the Constitution of India with a prayer stated supra.

3. Respondent No.1 filed counter affidavit. One Dr. T.Arockinathan, Executive Officer of Secunderabad Cantonment Board, has sworn to the counter affidavit on behalf of the 1st respondent. It is stated in the counter affidavit that the land covered by Survey No. 74/7 of East Marredpally, Mahendra Hills, is a Government land and the board was requested by the Collector, Hyderabad not to sanction any plan in respect of land in Survey No. 74. In view of the above order of the District Collector, the petitioner was directed to submit 'No Objection Certificate' issued by the District Collector, Hyderabad and National Airport Authority of India. The petitioner failed to submit 'No Objection Certificate' from the District Collector, Hyderabad, till date. Under Section 179 of Cantonment Act, 1924 prior permission of Cantonment Board has to be taken for any erection or re-erection of a building. The board is empowered to refuse sanction for erection or re-erection of the building under section 181(4) of Cantonment Act, 1924, if there is a dispute in respect of the land. In view of the aforesaid provision of law, particularly Section 181(4)(b) of Cantonment Act, 1924, the Cantonment Board does have the obligation to return the plan. Under Section 181(3) of the Cantonment Act, 1924, the board is under obligation to refer the plan to Defence Estates Officer for his clearance and if a definite objection is taken by the Defence Estates Officer, the board will be left with no other alternative other than returning the plan or rejecting the plan under Section 181(4)(b) of Cantonment Act, 1924.

4. One U.Raghuram Sharma, Mandal Revenue Officer, Marredpally Mandal, has sworn to the counter affidavit filed on behalf of the 2nd respondent. The counter affidavit in brief is as follows:

The land claimed by the petitioner falls in Survey No. 74 of Marredpally, Paigah village, which is classified as Government land. Survey No. 74 of Marredpally village admeasuring an extent of Ac.306.15 guntas has been recorded as 'Sarkari Kanchagutta' as per pahani of 1356 Fasli i.e. (1947 A.D.). On verification of pahanies from 1947 A.D. to 1982 A.D. and Khasra Pahani of 1954-55, it was noticed that sy.No.74/2 to 74/13 were shown under the occupation of 12 persons as pattedars leaving an extent of Ac.3-01 guntas in Sy.No. 74/1 as Government land free from encroachment. As many as 7 Co-operative Societies have occupied an

extent of about 192 Acres of land in Sy.No.74 of Marredpally village claiming title through certain assignments purported to be given by the then Paigah authorities. Marredpally Paigah, an ex jagir village, was under the control of Amir E. Paigah Asman Jah. After the abolition of Paigahas under Jagir Abolition Act, 1949, the village has been vested with the Government. In the year 1968, Nazim Atiyat has conducted Inam enquiry into the validity of alleged grant and passed orders on 28-10-1968 eschewing around 102 villages to the Government holding that they are not covered by any grant. Marredpally village also figures as one of the 102 villages. The orders of the Nazim Atiyat came to be confirmed by the High Court in W.P.No. 3530/77 and in W.A.No. 289/78 filed by the Amir-E-Paigah. Seven Co-operative Societies claimed the Government land in the above Survey number on the basis of certain assignments purported to have been made by the then Paigah authorities. In the absence of valid grant in favour of Amir-E-Paigah, the alleged assignsments are void. The sub-divisions appearing in the pahanies of 1359 Fasli (1949 A.D.) onwards are not supported by any survey records viz. Supplementary sethwar, sub-division sketch (phodi) etc. In the year 1987 the government has appointed the then Commissioner of Land Revenue as Enquiry Officer vide G.O.Rt.No. 930, Revenue dated 21-07-1987 to cause a detailed enquiry into the alleged land grabbing in Sy.No.74 of Marredpally village. The Commissioner after conducting a detailed enquiry made certain recommendations to the Government. One of the recommendations is to regularize the possession of occupants in respect of 141 Acres over which constructions have come up by collecting a percentage of current market value. The above recommendations have been accepted by the Government and a Government Memo No. 2678/Assn.III(2)/87-25, Revenue Department, dated 10-02-1994 has been issued. Pursuant to the instructions in the above memo, the authorities have started taking measures to protect the vacant land. The M.R.O. Secunderabad, has filed a petition before District Revenue Officer, Hyderabad for correction of entries in pahani under Rule 15 (2) of R.O.R. Act. Aggrieved by the same, one Sri Bhagwan Das has filed a case before this Court and got the proceedings before the D.R.O. stayed. Subsequently, in the year 1997, the Mandal Revenue Officer, Marredpally has filed a land grabbing case in L.G.C.No.167 of 1997 before the Special Court against the Cooperative Housing Societies and the case is pending for adjudication. The petitioner herein is claiming the land through one Dhanalaxmi Cooperative Housing Building Society who is also a party to the L.G.C. No.167/97 being respondent No.2. The entire land in Sy.No.74 is a

Government land. The land in question is vacant on the ground and as such does come within the purview of G.O.s which envisage regularization of unauthorized occupation. In order to consider the request of the petitioner positively, there should be a residential structure constructed prior to 1990 over the land in question. Since no structures exist over the land in question, the request of the petitioner for regularization cannot be considered. When the title of the petitioner and his predecessor in interest to the land is under cloud and is in dispute and under adjudication before the Special Court in LGC No. 167 of 1997, the petitioner is not entitled to get any permission whatsoever from the Cantonment Board and Airport Authorities. One Shuja Mohammed sheriff tried to make illegal construction over the land in Survey No. 74 of Marredpally, the revenue authorities raised objections of his making illegal construction. Thereupon he filed writ petition being W.P.No. 19568 of 2005, before this Court. The said writ petition came to be disposed of with the following directions.

> "*The Mandal Revenue Officer, Marredpally shall file application before the Special Court for impleading the petitioners in L.G.C. NO. 167 of 1997 within a period of four weeks from the date of receipt of a copy of this order and obtain appropriate orders against the petitioners. Till then the Mandal Revenue Officer shall not in any manner disturb the possession of the petitioners. Further, in view of the orders of injunction granted by th especial Court on 08-12-1998, as referred to herein above. It would be appropriate to direct status quo and as on today with regard to possession as well as construction by the petitioners".*

One more writ petition before this Court in W.P.No. 9829 of 2002 has been filed by Balam Rai Cooperative Society represented by its President M.Komaraiah and another. The said Writ Petition came to be disposed of on 12-7-2005 with the following directions:

> "*After hearing both the sides and considering the facts and circumstances of the case, it is seen that on one hand, the Government is claiming the land as its property and filed LGC No. 167 of 1997 before the Special Court and on the other hand, the petitioners are claiming it is having purchased through sale deed from the owner of the land. Therefore, unless and until the rights of the parties are decided in the LGC it cannot be held that the petitioner are having title over*

the property. In view of the above, the writ petition is disposed of directing both the parties to maintain status quo and further not to change the nature of the land or create third party interest till disposal of the L.G.C. – No costs".

Yet another writ petition being W.P.No.14053 of 2005 came to be filedl wherein similar directions have been issued. The documents referred to by the petitioner do not confer any right or title on him in respect of the land in question. The petitioner cannot take shelter under the orders passed by this Court in W.P.No.61/2000 especially in view of the orders passed by this Court in W.P.No.19568 of 205, 9829 of 2002 and 14053 of 2005 and W.P.No. 26039 of 2005. The Airports Authorities have rightly insisted upon production of clearance from the Collector as the land in Sy.No. 74 is a Government land and as a Land Grabbing case in L.G.C.No.167 of 1997 is pending.

5. The counter affidavit of third respondent in brief is as follows:

One B.V. Subbarao, Senior Law Manager of 3rd respondent sworn to the affidavit. It is stated in the counter that the 3rd respondent is not aware of the controversy regarding the ownership of the land in S.No. 74 and its sub-divisions earlier to receipt of the letter dated 05-10-2004 from the 2nd respondent office. The said letter clearly states that a case LGC No. 167 of 1997 is pending before the Special Court in respect of the said Survey No. The petitioner claims to have purchased a plot in Survey No. 74/7 from Dhanalakshmi Co-op Housing Society and that the said society is also a party to the proceedings before the Special Court in LGC No.167 of 1997. The Government, Revenue Department, issued orders prohibiting registration of documents under Section 22-A of the Registration Act in respect of the said lands. In these circumstances, the respondent has no option but to follow the instructions of the competent authority-2nd respondent in respect of issuance of 'No Objection Certificates' even though the same is only in respect of height of the buildings.

The petitioner filed reply affidavit, it is stated in the reply affidavit that the 'Government' referred to any Section 491(4) (B) relates to claim by the Central Government i.e. Government of India.

6. Heard learned senior counsel appearing for the petitioner and learned counsel appearing for the respondents.

7. Learned Senior counsel for the petitioner submits that the Government referred in Section 181 of the Cantonment Act, 1924 is relatable to the Central Government and not to State Government and since the Central Government has not claimed the property in dispute, there is no justification on the part of the Secunderabad Cantonment Board-1st respondent in directing the petitioner to secure 'No Objection Certificate' from District Collector, Hyderabad. He further submits that the compliance of the objections raised by the Secunderabad Cantonment Board-1st respondent are impossible of compliance, in view of the fact that the State Government has already initiated proceedings before the Land Grabbing Case against the vendor of the petitioner and in which event the question of securing 'No Objection Certificate' from the District Collector is one which is impossible. To buttress his submissions, he placed reliance on the decisions in ***Subash Kumar Lohade Vs. The Special Officer, Municipal Corporation of Hyderabad*** and ***Cantonment Board Kamptee Vs. Burjorjee Dada Bhoy Zai***

In the 1st cited decision, the petitioner therein, owner of certain plot applied in the form prescribed in Appendix A to Hyderabad Municipal Corporation Layout Rules for sanction of layout in respect of said plot in Banjara, Hills area, along with a plan demarcating roads, plots and boundaries. He had also paid betterment charges. In spite of this, the Corporation did not accord sanction but had been insisting on obtaiing no objection certificate from District Collector with respect to his title. Corporation insisted on production of no objection certificate in pursuance of a Circular Memo No. 692/TPA-2 d/-27-3-1982 issued by it on the strength of letter NO. F4/2474/81, dt. 5-3-1982 of the District Collector. Petitioner filed writ petition for a direction against the Corporation restraining it from insisting upon production of such a certificate. It has been held therein that the provisions of Ss. 388,389, 390 and 391 of the Hyderabad Municipal Corporation Act or of Rr. 3,4,9 and 13 of the Municipal Corporation of Hyderabad (Layout) Rules or of Ss. 2(b), 2(e) and 13 of the Andhra Pradesh Urban Areas (Development)Act, 1975 or of Regulations 1.3, 5.2, 5.3, 5.6 and 12 of the Zoning Regulations of Hyderabad Development Area, 1981, or of Bye laws 4.2 (VI) and 6.2 of the (Building) Bye Laws, 1972, either expressely or by necessary implication, empower the Municipal Corporation to call upon the applicant – Whether he applies for sanction of lay out or for permission to construct a building – to produce, what is called a clearance certificate from the District

Collector. They show that an application for sanction of layout has to be made in the form specified in Appendix A to the Rules by the owner of the land and that he should enclose to the application his title deeds and a non-encumbrance certificate in proof of his title and a free title at that. In such a situation, the authority competent to sanction the layout has to satisfied before sanctioning, that the applicant for sanction of layout is the owner of the land. That satisfaction has to be arrived at on the basis of the title deed or documents as the case may be, produced by him and the non-encumbrance certificate. This necessarily means and implies that, if another person comes and says that the applicant is not the owner, the authority has to look into that aspect and decide whether the applicant is the owner or not, so that the layout applied for by him can be sanctioned, in case his application is found to be otherwise in order. Any determination made by the authority on the said question is not conclusive, but it is good for the limited purpose of the Act and the Rules, i.e. for the purpose of the sanction of layout. Any decision or decree obtained by a person concerned would certainly be binding upon the Authority, and would override any determination/finding of the Authority. The Collector's letter d/5-3-1982 cannot be put on a higher footing than that of a general objection to grant of permission for construction/approval of layouts in Banjara Hills Area. There are no statutory provisions providing for issuance of clearance certificate by District Collector. The letter is not written in pursuance of any statutory power nor can the Municipal Corporation treat the said letter as a binding directive. The circular in effect compels every applicant to get his title approved by the District Collector. The District Collector has practically been vested with the power to veto any application for sanction of layout or for construction of building by just refusing to issue clearance certificate. The Collector is not the "Government" within the meaning of that expression in Chapter XXI and the letter of District Collector cannot be treated as or equated as a binding directive or order of Government. The Corporation therefore was in error in issuing the Circular d/27-3-1982 in the instant case. The said Circular is ultra vires the powers of the Chief City Planner of the Corporation as also the powers of the Corporation. It has to act within the four corners of the Act and other statutory provisions governing it and cannot act beyond them. The Act and other provisions do not warrant or justify the circular and it is liable to be quashed The quashing of the said Circular does not, however, mean that the Corporation has no power to take cognizance of the letter of the Collector, or her objection. The Corporation shall keep in mind the said general objection while sanctioning the

layouts with respect to lands in Banjara Hills area including the plan referred to in the Collector's letter, if and when communicated and in each such case, satisfy itself that the applicant for sanction of layout is the owner of the land, as contemplated by the layout Rules and the Zoning Regulations, it shall sanction the layout only if it is satisfied in that behalf, after making such enquiry as it thinks appropriate.

In the 2nd cited decision, it has been held that the Board is not obviously concerned with the existence of any dispute unless it is brought to its notice under subs (3). Such objection may relate to a pre-existing dispute or to a dispute which may arise in consequence of the proposed construction. In either case, it has to be considered by the Board under cl.(b) of sub-s (4) of the Cantonments Act, 1924.

8. Learned Standing Counsel appearing for the Secunderabad Cantonment Board-2nd respondent submits that sub-section 3 of section 181 of the Cantonment Act provides for referring the application to the Defence Estates Officer for ascertaining whether any objection on the part of the Government to sanction erection or re-erection over the land. The statutory provisions cast a duty upon sanctioning authority to refer the matter as pointed out above. In support of his submission, he placed reliance in ***Secunderabad Cantonment Board, Vs. Mohammed Mohiuddin,*** wherein it has been held as follows:

> "*So far as the question of investigating into the title of the parties is concerned, we feel that the view of the High Court to the extent that title is not required to be established by any of the parties before the competent authority, is correct. So far possession is concerned, it may be indicated that there seems to be no such specific provision requiring to establish possession but it may depend upon facts of a given case and it may be considered as one of the relevant aspects to be kept in mind while considering the application for sanction of a plan. But so far the statutory requirement is concerned, it is evident from perusal of sub section 4(b) of Section 181 that the competent authority dealing with the matter, has to see whether there is or not any dispute abut the land between the person applying for sanction of the plan and the Government. In case the concerned authority is satisfied about the existence of such a dispute in terms of Section 181 of the Act, the request for sanction of the lay out plan is liable to be refused. In this connection, it will also be relevant to refer to sub-section (3) of*

Section 181 which provides that before sanctioning a plan the Board is required to refer the application to the Defence Estates Officer for ascertaining whether there was any objection on the part of the Government to such erection or re-erection over the land. The said provision casts a duty upon the sanctioning authority to refer the matter as pointed out above. Accordingly, it referred the matter to the DEO, who raised objections regarding sanction of the plant. The objection relates to the question of ownership of the land. The Government claims ownership of the land and in that regard reliance was placed upon entries in the Revenue Records and the General Land Register which are maintained in due course of official business. The respondents claimed their title through the sale deed executed in favour of son of Sadiq Ali Khan in the year 1899, who on attaining majority had relinquished his rights in favour of his father Sadiq Ali Khan on 11-8-1911 and then the alleged transfer of different parts of the land to eleven different persons. It has been pointed out earlier also that the respondents had moved for correction of the records before the Revenue Officer but they failed. The appeal also remained unsuccessful, in which all the 62 respondents had got impleaded themselves. A civil suit for injunction was filed by Sadiq Ali Khan in 1992 but the prayer for injunction was refused except in respect of a part of the land measuring 2.71 acres since prima facie their possession was not found over the rest of the land. It may be worthwhile to notice that the proceedings for correction of the records and the Civil Suit for injunction were initiated in 1992 and the application for sanction of the plan was moved in 1994, that is to say, after the respondents remained unsuccessful in their attempts to obtain orders in their favour twice before. In such circumstances, it would be difficult to say that there would be no bona fide dispute about the land between the parties. IN that background, we do not feel it necessary to enter into the contents and merits of various documents relating to title relied upon by either side. That enquiry would be necessary only if question of title could be decided these proceedings and not otherwise. But, we find there enough material, on the basis on which an authority could reasonably come to the conclusion that there was a dispute, relating to the land, between the applicant and the Government in respect of which sanction of the plan to construct, was applied for. Such a dispute was brought to the notice of the competent authority by means of objection placed before it by the Defence Estates Officer under the statutory provision. We do not think that it would be possible to say that the authority concerned took a view about existence of dispute which was not sustainable"

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9. It is a matter of record that the vendor of the petitioner is a party to the land grabbing case filed by the Government. Many writ petitions came to be filed against the State Government when the District Collector refused to give 'No Objection Certificate'. Indeed writ petitions i.e. W.P.Nos. 19568 of 2005, 9829 of 2002,14053 of 2005 and 26039 of 2005 have been filed and the Cantonment Board is one of the respondents thereto. The relief sought for in the said writ petitions is almost similar to the relief sought for by the petitioner in the present writ petition. In all the writ petitions parties have been directed to maintain status quo. I deem it appropriate to refer the relevant portion in W.P.No.19568 of 2005 which read as follows:

> "*Accordingly, the writ petition is disposed of in the following manner. The Mandal Revenue Officer, Maredpally shall file application before the Special Court for impleading the petitioners in L.G.C.No.167 of 1997 within a period of four weeks from the date of receipt of a copy of this order and obtain appropriate orders against the petitioners. Till then, the Mandal Revenue Officer shall not in any manner disturb the possession of the petitioners. Further, in view of the orders of injunction granted by the Special Court on 08-12-1998, as referred to herein above, it would be appropriate to direct status quo as on today with regard to possession as well as construction by the petitioners".*

10. It is also required to be noted the order passed in the writ petition No. 9829 of 2002 and it is thus:

> "*After hearing both the sides and considering the facts and circumstances of the case, it is seen that on one hand, the Government is claiming the land as its property and filed L.G.C.No. 167 of 1997 before the Special Court, and on the other hand, the petitioners are claiming it as having purchased through sale deed from the owner of the land. Therefore, unless and until the rights of the parties are decided in the L.G.C., it cannot be held that the petitioners are having title over the property.*
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> *In view of the above, the Writ Petition is disposed of directing both the parties to maintain status quo, and further not to change the nature of the land or create third party interest till disposal of the L.G.C. No costs".*

11. Undisputedly, the vendor of the petitioner is party to L.G.C.No.167 of 1997. When some of the purchasers came up with the writ petitions referred to above, an order of status quo has been passed by this Court. In the circumstances of the case, the order passed by the 1st respondent does not suffer from any illegality or irregularity or infirmity, warranting interference of this Court in exercise of power under Section 226 of the Constitution of India.

12. Accordingly, the writ petition fails and the same is dismissed. No order as to costs.

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Justice B.Seshasayana Reddy

14th March, 2006

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